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From:

Sent: Wednesday, January 26, 2011 2:08:19 PM

To:

Cc:

Subject: Re: Interest Netting Question

In response to your request for our advice on whether interest netting would apply in the case, we conclude that interest netting would not apply. While we understand the close relationship between the ' taxes and those of , we conclude that there are two separate taxpayers in this case. IRC 6621(d) specifically provides that interest netting only applies when there is an underpayment and overpayment by the "same taxpayer," which is not so here.

Also, we agree that IRC 6601(f) does not apply in this situation. When there is a credit of an overpayment against an underpayment, IRC 6601(f) provides for an elimination of interest under certain circumstances. However, the Service must first credit an overpayment against an underpayment pursuant to IRC 6402(a), a fact missing in this instance. For one thing, no credit has been made. Moreover, IRC 6402(a)'s terms provide for crediting an overpayment against the liability of "the person who made the overpayment." Because there are two different taxpayers in this case, IRC 6601(f) does not apply. See Rev. Proc. 65-20.

The taxpayers state, "IRM 20.2.4.6.5 explicitly allows an overpayment and the interest thereon to be credited to the liability of a different taxpayer with the overpaid taxpayer's consent." While the Service may accede to a request to credit one taxpayer's overpayment (and the accrued interest, running to the date of the credit) against a different taxpayer's underpayment (including, as the case may be, interest on the unpaid principal accruing up to the credit date), the taxpayers here incorrectly equate this procedure with the interest restriction under IRC 6601(f) that applies when the Service acts under section 6402 to credit a taxpayer's overpayment against a liability of the taxpayer.

Let me know if you need any other assistance.